## REMARKS

The specification and claims have not been amended. Therefore, the thirty seven (37) claims remain pending. Applicants respectfully request reconsideration of claims 1-37 in view of the remarks below.

By way of this Response, Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

### Double Patenting

1. Claims 1-7 are rejected under statutory double patenting (35 U.S.C. 101) as claiming the same invention as that of Claims 26-31 of prior U.S. Patent No. 5,786,598 (the '598 patent). Applicant respectfully traverses these rejections. Claim 1, for example, recites alternate claim language that distinguishes the claim scope over claims 26-31 of the '598 patent.

Grounds for statutory double patenting require that "a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent" (MPEP 804(II)(A)). Because a system could literally infringe claim 1 and not literally infringe claim 26 of the '598 patent, claim 1 is not claiming the same apparatus as claim 26 of the '598 patent. More specifically, claim 1 of the subject application recites in part for example "a flashlamp for generating high intensity, short-duration pulses of light. " (Emphasis added). Claim 26 of the '598 patent instead recites in part "means for generating high-intensity, short-duration pulses of polychromatic light in a broad spectrum," which is different than pending claim 1. A system that employs a flashlamp for generating high-intensity, short-duration pulses of light does not infringe claim 26 of the '589 patent if the pulses of light are not "pulses of

polychromatic light" and additionally is not in a "broad spectrum" as recited in claim 26. As such, claim 1 of the present application has a different scope than that of claim 26 of the '598 patent because a device could infringe claim 1 without literally infringing claim 26 of the '598 patent. Therefore, Applicants respectfully submit that claim 1 of the pending application does not claim the same apparatus as claim 26 of the '598 patent, and thus Applicants request the double patenting rejection be withdrawn.

Similarly, claim 7 for example recites in part "flashlamp generates high-intensity, short-duration pulses of polychromatic light." Alternatively, claim 26 of the '598 patent requires "polychromatic light in a broad spectrum." (Emphasis added). Therefore, a system that generates pulses of light that are not broad spectrum will not infringe claim 26, but would infringe claim 7. Therefore, claim 7 is also not claiming the same apparatus as claim 26 of the '598 patent, and should not be rejected under statutory double patenting.

2. Claims 8-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 26-31 of U.S. Patent No. 5,786,598 (Clark et al.)

Applicants submit that both the present application and the prior patent are and have been commonly owned by PurePulse Technologies, Inc., during their entire lifetimes. Both the present and the prior patent (U.S. Patent No. 5,786,598) have been assigned to Pure Pulse Technology, Inc., and is recorded at reel and frame 008066/0840. Applicants submit herewith a terminal disclaimer for U.S. Patent No. 5,786,598 in compliance with 37 C.F.R. 1.321(c). Therefore, it is respectfully submitted that the rejection should be overcome and withdrawn.

## CONCLUSION

Applicants submit that the above remarks distinguish the claims to overcome the double patenting rejection, the Terminal Disclaimer overcomes the non-statutory double patenting, and Applicants respectfully request claims 1-37 be allowed.

Respectfully submitted,

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